

THIRD DIVISION
September 30, 2011

No. 1-09-1097

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the |
| |) | Circuit Court of |
| Plaintiff-Appellee, |) | Cook County. |
| |) | |
| v. |) | No. 07 CR 25769 |
| |) | |
| SHERMAINE SARGENT, |) | Honorable |
| |) | Kevin M. Sheehan, |
| Defendant-Appellant. |) | Judge Presiding. |

PRESIDING JUSTICE STEELE delivered the judgment of the court.
Justices Neville and Murphy concurred in the judgment.

ORDER

Held: Where defendant's statements to police represented a threat of physical harm, he was proven guilty beyond a reasonable doubt of aggravated intimidation; where the court properly considered factors in mitigation and aggravation, and sentenced defendant to a term within the statutory sentencing range, his sentence was not excessive; the circuit court's judgment was affirmed.

¶ 1 Following a bench trial, defendant Shermaine Sargent was found guilty of aggravated intimidation of a peace officer (07 CR 25769), bribery (same case), and aggravated battery (07 CR 25770). The court imposed 10 years' imprisonment for aggravated intimidation, 5 years for bribery, and 5 years for aggravated battery, with all sentences to be served concurrently. On

appeal, defendant contests the sufficiency of the evidence of his aggravated intimidation conviction. He also contends that his sentence for aggravated intimidation was excessive. We affirm.

¶ 2 At trial, Lorenzo Burton testified that he was a probation officer for the Cook County Adult Probation Department. On November 28, 2007, defendant was one of Burton's probationers, and Burton met with him at defendant's home or in Burton's office about five times a week. A few days prior to November 28, defendant questioned Burton about a picture on his desk. Burton identified the people in the picture to defendant as Burton's wife and son. As part of defendant's probation, he was required to be inside of his house at 7 p.m. each night. At 7:45 p.m. on the date in question, Burton and his partner went to defendant's home at 5735 South Emerald Avenue in Chicago to conduct a curfew check. Burton and his partner knocked on the door, defendant answered, and the officers left the residence. They returned to defendant's residence that same evening at 10 p.m., and defendant answered the door. As the officers started to leave, defendant told Burton that he would give him \$10,000 to stop bothering him during his probation. Burton told defendant to go back inside of his house, but defendant stated that he was serious and that his lawyer would give him \$10,000 in exchange for leaving him alone. Burton told defendant "no," detained defendant, and called his supervisor Matt Sobieski. While defendant was being detained, he asked Burton, "what's going to happen to your wife." Sobieski and Officer Shoup arrived at the scene. Burton told Shoup about both of defendant's offers of \$10,000. Shoup transported defendant to the police station. Burton subsequently returned to the police station later that evening and saw defendant in the interview room. Defendant yelled Burton's name and stated "what's going to happen to your son."

¶ 3 Phillip Loizon testified that he was the deputy chief of the Cook County Department of Probation. At about 11 p.m. on the date in question, Loizon spoke with defendant at the police

station after advising him of his *Miranda* rights. When the conversation ended and Loizon got up to leave the interview room, defendant grabbed his shirt collar and spat in his face. Officer Dabias and Supervisor Sobieski immediately came into the interview room and restrained defendant.

¶ 4 Officer Robert Shoup testified that after 10 p.m. on November 28, he went to 5735 South Emerald Avenue and spoke to Burton. After Shoup and Burton had a brief conversation at the scene, Shoup transported defendant to the police station. Burton later told Shoup at the station that defendant attempted to bribe him and threatened him by stating, "what about your wife and what about your son." Between midnight and 12:30 a.m., defendant was in Shoup's office with Shoup and Officer Ladd. The officers were processing defendant for an arrest and defendant was belligerent. He specifically stated that Cook County is not going to lock him up, and that no judge "has the balls to put him away." Defendant also stated that he was a Black Disciple for life, would "kill all you police mother fuckers," and admitted to spitting on an officer.

¶ 5 Following closing arguments, the trial court found defendant guilty of aggravated intimidation of a police officer, bribery, and aggravated battery of a police officer. In doing so, the court indicated that the statements defendant made to Shoup corroborated his previous behavior toward Burton and Loizon. The court further found the testimony of Shoup, Loizon, and Burton credible and unimpeached.

¶ 6 At sentencing, the State commented in aggravation that defendant had previous convictions for vehicular hijacking and aggravated robbery. He was also convicted of a misdemeanor offense for aggravated battery and criminal damage to State property. The State requested that defendant be sentenced to a significant amount of penitentiary time based on the fact that he was on probation and proceeded in conduct of intimidation and battery to two different police officers. In mitigation, defense counsel stated that his convictions of aggravated

robbery and aggravated battery resulted in boot camp, which defendant successfully completed. Counsel further stated that defendant was employed at the time of his arrest, had four children, and earned his G.E.D.

¶ 7 Following aggravation and mitigation, the trial court sentenced defendant to concurrent terms of 10 years for aggravated intimidation, 5 years for bribery, and 5 years for aggravated battery. In doing so, the court stated that it considered the presentence investigation report and evidence in aggravation and mitigation. The court then stated that defendant's actions "stuns the court," and that defendant had the same issues in a previous case, *i.e.*, an aggravated battery to a police officer in 2004. The court further indicated that defendant's criminal background involved violence.

¶ 8 Defendant subsequently filed a motion to reconsider sentence alleging that his sentence was excessive because the trial court gave greater weight to the aggravating factors than to the mitigating factors, and no one was injured in this case. The court denied defendant's motion to reconsider, finding that it did not balance the factors in aggravation greater than the mitigating factors.

¶ 9 On appeal, defendant contends that the State failed to prove him guilty of aggravated intimidation where it failed to establish that his statements represented a genuine threat of physical harm. Defendant specifically contends that his statements regarding Burton's wife and son were ambiguous, and the surrounding circumstances in which he made them failed to clarify their meaning.

¶ 10 Where, as here, defendant challenges the sufficiency of the evidence to sustain his conviction, the question for the reviewing court is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Ross*, 229 Ill. 2d 255, 272 (2008). This standard

recognizes the responsibility of the trier of fact to resolve conflicts in testimony, weigh the evidence, and draw reasonable inferences therefrom. *People v. Campbell*, 146 Ill. 2d 363, 375 (1992). A reviewing court will not set aside a criminal conviction unless the evidence is so unreasonable or improbable as to raise a reasonable doubt of defendant's guilt. *People v. Hall*, 194 Ill. 2d 305, 330 (2000).

¶ 11 As relevant to this appeal, a defendant commits aggravated intimidation when these three elements are met: (1) he commits the offense of intimidation; (2) he knew the victim was a peace officer; and (3) he committed the offense either (i) while the victim was engaged in his official duties; (ii) to prevent the victim from performing his duties; or (iii) in retaliation for the victim's performance of his official duties. 720 ILCS 5/12-6.2(a) (West 2006).

¶ 12 A defendant commits the offense of intimidation, in pertinent part, when he, "with intent to cause another to perform or to omit the performance of any act, he communicates to another *** in person *** a threat to perform without lawful authority any of the following acts: (1) Inflict physical harm on the person threatened or any other person ***." 720 ILCS 5/12-6 (West 2006).

¶ 13 Here, defendant asserts that the evidence was insufficient to prove the first element of aggravated intimidation, *i.e.*, the underlying offense of intimidation. "[T]he gravamen of the offense of intimidation is the exercise of improper influence, the making of a threat with the intent to coerce another." *People v. Byrd*, 285 Ill. App. 3d 641, 647 (1996). In order to determine whether a defendant threatened someone for purposes of the intimidation statute, the finder of fact must examine the defendant's words and actions to determine whether they had a reasonable tendency, under the circumstances, to place another in fear that the defendant would carry out the threat. *Byrd*, 285 Ill. App. 3d at 648-49 (citing *People v. Verkrusysse*, 261 Ill. App. 3d 972, 975 (1994)).

¶ 14 Based on the surrounding circumstances in this case, defendant's statements to his probation officer constituted threats as contemplated by the intimidation statute. The evidence showed that when Burton, his probation officer, returned to defendant's residence for the second time on November 28, defendant told Burton that he would give him \$10,000 to leave him alone. Burton told defendant to go back inside of his house, but defendant stated that he was serious and that his lawyer would give him \$10,000. Burton detained him and defendant asked Burton "what's going to happen to your wife." After defendant was transported to the police station by Officer Shoup, Burton arrived and saw defendant. Defendant yelled Burton's name and stated "what's going to happen to your son." Defendant continued his belligerent behavior toward the officers that evening and into the early morning hours of November 29 when he spat on Deputy Chief Loizon and told Officer Shoup that Cook County is not going to lock him up, and that no judge "has the balls to put him away." Defendant further stated that he was a Black Disciple for life and would "kill all you police mother fuckers."

¶ 15 Nevertheless, defendant contends that his statements to Burton did not contain a specific threat of harm as required by law. See *People v. Maldonado*, 247 Ill. App. 3d 149, 153 (1993) (citing *People v. Tennin*, 162 Ill. App. 3d 520, 525 (1987) (stating that the purpose of the intimidation statute is to prohibit the making of specified threats intended to compel a person to act against the person's will)). However, in this case, given the context in which the statements were made, defendant was clearly threatening physical harm to Burton's wife and son. Defendant made the statements at issue after Burton rejected his offer to leave him alone during his probation and detained him. Defendant's behavior towards Burton, Loizon, and Shoup clearly showed that he was angry at the time of his arrest, and, among other acts of aggression, he threatened Burton's family.

¶ 16 Moreover, defendant cites to several cases where the defendants' convictions were

affirmed based on threats more specific than in the instant case. See, e.g., *People v. Annerino*, 182 Ill. App. 3d 920, 923 (1989) (the defendant threatened to kill a potential witness if she testified against him); *People v. Cole*, 57 Ill. App. 3d 396, 397 (1978) (the defendant threatened to blow his ex-wife's brain out); *People v. Gallo*, 54 Ill. 2d 343, 346 (1973) (the defendant threatened to break the legs of a borrower). In doing so, defendant maintains the type of specificity used in those cases is necessary for a conviction of intimidation. We disagree. None of these cases support the proposition that defendant's statements here were not cognizable threats under the intimidation statute, because they did not describe what would happen to Burton's wife and son. Neither the intimidation statute nor the applicable case law require such specificity. See *People v. Valko*, 201 Ill. App. 3d 462, 473 (1990) (finding that telling a nine-year-old victim that "something would happen" to him and his mother if he told anyone about the sex acts amounted to intimidation).

¶ 17 Defendant next contends that his 10-year sentence for aggravated intimidation was excessive in light of the facts of this case. He specifically maintains that the nature of the offense did not involve a specified threat of physical harm, or result in physical harm to Burton or his family. He further asserts that his background did not warrant the sentence he received.

¶ 18 In this case, aggravated intimidation is a Class 2 offense carrying a sentencing range from 3 to 14 years' imprisonment. 720 ILCS 5/12-6.2(b) (West 2006).

¶ 19 A trial court has broad discretion to determine an appropriate sentence, and a reviewing court may reverse only where the trial court has abused that discretion. *People v. Patterson*, 217 Ill. 2d 407, 448 (2005). The reviewing court should not substitute its judgment for that of the trial court simply because it would have balanced the appropriate sentencing factors differently. *People v. Alexander*, 239 Ill. 2d 205, 214-15 (2010). A sentence within the statutory range does not constitute an abuse of discretion unless it varies greatly from the purpose of the law or is

manifestly disproportionate to the nature of the offense. *People v. Henderson*, 354 Ill. App. 3d 8, 19 (2004).

¶ 20 The trial court clearly stated that it had considered appropriate factors in mitigation and aggravation. At defendant's sentencing hearing, the court stated that it:

"considered the evidence presented at trial, having considered the pre-sentence investigation report ***. Having considered the evidence offered in aggravation and mitigation, having considered the statutory factors in aggravation and mitigation, the financial impact of incarceration, the arguments of counsel as to sentencing alternatives. Mr. Sargent, the behavior you exhibited during the completion of these two cases and the crimes that were involved absolutely stuns the court. Stuns the court. And when I look at your background, apparently you've had the same issues in a previous case, an aggravated battery to a police officer back in '04, albeit it was reduced to a misdemeanor. But the crimes you've been convicted of involve violence, sir. You're a violent individual. Vehicular hijacking a Class 1 back in 2002, 4 years IDOC, Judge Clay, concurrent to a robbery case and an aggravated battery to a peace officer. The common thread among the majority of your indiscretions *** have been batteries to police officers. Your probation officers, lock up people, et cetera. It's unacceptable, sir, and the sentence I'm going to give you is needed to deter your conduct to other members of the society."

¶ 21 From these statements, it is clear that the trial court thoughtfully weighed the appropriate

mitigating and aggravating factors and sentenced defendant to a term within the permissible sentencing range. The record makes clear that defendant's actions toward the police officers were particularly egregious. The trial court even stated that defendant's conduct was "stun[ning]." It was obvious from the court's comments that defendant's conduct and criminal history weighed heavily in its sentencing decision. The record establishes that the court balanced the aggravating and mitigating factors present in this case, and we cannot find that it abused its discretion in imposing a 10-year sentence for aggravated intimidation, which is 4 years less than the maximum.

¶ 22 Defendant finally contends that the trial court used a factor inherent in the offense of aggravated intimidation as an aggravating factor. He specifically maintains that the court relied on Burton's status as a peace officer, a factor which was inherent in the offense of aggravated intimidation as charged in this case.

¶ 23 Defendant concedes that although the issue of his excessive sentence was preserved when he filed his motion to reconsider, he failed to argue that the trial court considered a factor inherent in the offense of aggravated intimidation when he imposed sentence, thus waiving that particular issue on appeal. *People v. Reed*, 177 Ill. 2d 389, 390 (1997); *People v. Enoch*, 122 Ill. 2d 176, 186-87 (1988). A forfeited argument regarding sentencing, however, may be reviewed for plain error. *People v. Freeman*, 404 Ill. App. 3d 978, 994 (2010) (citing *People v. Hillier*, 237 Ill. 2d 539, 545 (2010)). In order to obtain relief under the plain error doctrine, a defendant must first show that a clear or obvious error occurred. *Hillier*, 237 Ill. 2d at 545. In the sentencing context, a defendant must then show either that (1) the evidence at the sentencing hearing was closely balanced, or (2) the error was so egregious as to deny the defendant a fair sentencing hearing. *Id.* Under both prongs of the doctrine, the defendant has the burden of persuasion. *Id.*

¶ 24 Even reliance on an improper factor in aggravation does not necessarily warrant any relief where the record demonstrates that the weight placed on the improperly considered factor did not result in a "harsher sentence than might otherwise have been imposed." *Freeman*, 404 Ill. App. 3d at 996-97 (citing *People v. Phelps*, 211 Ill. 2d 1, 11-12 (2004)). Therefore, if it appears from the record that the weight placed on the improperly considered factor was so insignificant that it did not result in a greater sentence, we need not remand for resentencing. *Freeman*, 404 Ill. App. 3d at 996.

¶ 25 Here, defendant failed to satisfy his burden to establish plain error. Although defendant alleged that he was denied a fair sentencing hearing because the court used Burton's status as a peace officer as an aggravating factor, the record shows that the weight placed on this factor was so insignificant that it did not result in a harsher sentence. *Freeman*, 404 Ill. App. 3d at 996-97. The trial court's explanation for the sentences it imposed was based on the totality of defendant's criminal record and his recidivism, which provided the basis for imposing an extended sentence.

¶ 26 In reaching this conclusion, we find the cases cited to by defendant distinguishable from the case at bar because the court in those cases utilized the improper factor to increase the sentence. See *e.g.*, *People v. Martin*, 119 Ill. 2d 453, 463 (1988) (remanding the cause for resentencing where the trial court considered an improper factor in aggravation and failed to recognize relevant factors in mitigation); *People v. Campos*, 155 Ill. App. 3d 348, 361 (1987) (holding that the trial court explicitly relied on an improper aggravating factor, *i.e.*, the victim's age, in sentencing the defendant). In this case, by contrast, the court's mention of Burton's status as a peace officer did not constitute plain error.

¶ 27 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 28 Affirmed.